

### **REMARKS**

The present amendment is in response to the *Advisory* Office Action, dated August 19, 2004, where the Examiner has rejected claims 28-47. By the present amendment, claims 30, 36-37, 40 and 46-47 have been cancelled, and claims 29, 31-33, 35, 39 and 41-43 have been amended. After the present amendment, claims 28-29, 31-35, 38-39, 41-45 are pending in the application. Reconsideration and allowance of pending claims in view of the amendments and the following remarks are respectfully requested.

**A. Rejection of Claims 32 and 42 under 35 U.S.C. § 112, ¶ 2**

The Examiner has rejected claims 32 and 42, under 35 U.S.C. § 112, ¶ 2, stating that the term “around five peaks and gains” is vague and indefinite. By the present amendment, applicant has amended claims 32 and 42 to replace “around five peaks and gains” with --less than five peaks and gains--. Accordingly, the Examiner’s rejection of claims 32 and 42 under 35 U.S.C. § 112, ¶ 2, has been overcome.

**B. Rejection of Claims 28-30 and 38-40 under 35 U.S.C. § 102(e)**

The Examiner has rejected claims 28-30 and 38-40, under 35 U.S.C. § 102(e), as being anticipated by Oshikiri, et al. (USPN 6,470,310) (“Oshikiri”). Applicant respectfully disagrees.

Applicant hereby swears behind the effective filing date of Oshikiri, i.e. September 28, 1999, under 37 C.F.R. § 1.131. Under 37 C.F.R. § 1.131, the inventor of the claimed invention may submit an appropriate declaration to overcome a reference. The showing of facts shall be such as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior

to the effective date of the reference to a subsequent reduction to practice or to the filing of the application. See 37 C.F.R. § 1.131. Applicant respectfully submits that claims 28-29 and 38-39 are allowable over Oshikiri based on the following remarks.

Pursuant to 37 C.F.R. § 1.131, attached is a declaration from inventor Yang Gao, including a copy of an Innovation Disclosure, having Docket No. 98RSS366, which was entered into the Rockwell Semiconductor Systems, Inc. Disclosure Database on September 1, 1998.

The Examiner will note that the last page of the enclosed Innovation Disclosure clearly shows that the Innovation Disclosure was entered into the Rockwell Semiconductor Systems, Inc. Disclosure Database, on September 1, 1998 at 10:48:38 AM, which predates the effective filing date of Oshikiri, i.e. September 28, 1999. Applicant respectfully submits that the Innovation Disclosure, entitled “Adaptive Excitation Pattern for Low Bit Rate Speech Coding” evidences that the inventor was in possession of the presently claimed subject matter on September 1, 1998. For instance, the Examiner’s attention is directed to page 2 of the Innovation Disclosure, under the heading “Solution” and Figure 1.

Accordingly, applicant respectfully requests that the rejection of claims 28-29 and 38-39, as being anticipated by Oshikiri under 35 U.S.C. § 102(e) be withdrawn.

**C. Rejection of Claims 31, 33-36, 41 and 43-46 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 31, 33-36, 41 and 43-46 under 35 U.S.C. § 103(a), as being unpatentable over Oshikiri in view of Akamine, et al. (USPN 5,265,167) (“Akamine”). Applicant respectfully disagrees.

For the reasons stated above, applicant respectfully submits that rejection of claims 31, 33-35, 41 and 43-45 as being unpatentable over Oshikiri in view of Akamine should be withdrawn.

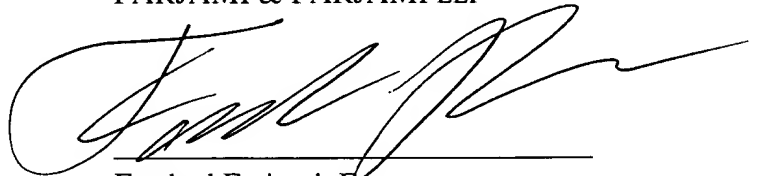
**D. Rejection of Claims 37 and 47 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 37 and 47 under 35 U.S.C. § 103(a), as being unpatentable over Oshikiri in view of Akamine, in further view of Su (USPN 6,014,622) ("Su"). By the present amendment, claims 37 and 47 have been cancelled and, thus, the Examiner's rejection has been rendered moot.

**E. Conclusion**

For all the foregoing reasons, an early allowance of claims 28-29, 31-35, 38-39, 41-45 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;  
FARJAMI & FARJAMI LLP



Farshad Farjami, Esq.  
Reg. No. 41,014

Farshad Farjami, Esq.  
FARJAMI & FARJAMI LLP  
26522 La Alameda Ave., Suite 360  
Mission Viejo, California 92691  
Tel: (949) 282-1000  
Fax: (949) 282-1002

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